

**From:** "William Thomas" <William.Thomas@BBKLAW.COM>  
**To:** <jkarkoski@waterboards.ca.gov>  
**Date:** 5/18/2007 3:45:16 PM  
**Subject:** Comments re new pesticide program and UC report

Joe, could you please forward copies of this to all the Board members, including Katherine Hart? Thank you.

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May 18, 2007

Via Electronic Mail

Joe Karkoski

Central Valley Regional Water Quality Control Board

11020 Sun Center Drive, Suite 200

Rancho Cordova, CA

Re: New Pesticide Programs and Related UC Report on Pesticide Evaluation

Dear Joe:

On behalf of Dow AgroSciences, I wanted to respond by the comment deadline as to the Regional Board's new global program to evaluate pesticides in respect to water quality and the program's reliance on the recent UCD report entitled "Methodology for Derivation of Pesticide Water Quality Criteria (WQC) for the Protection of Aquatic Life in the Sacramento and San Joaquin River Basins: Phase II: Methodology Development and Derivation of Chlorpyrifos Criteria."

Before our specific comments, I do want to acknowledge the efforts by you and Paul to keep us informed as this new program has begun to develop.

First, there has been extensive scientific critique of the UC report, much of which is fundamentally critical. Before there is any reliance on this report the extensive scientific questions directed to that report must be resolved. Many of those scientific and policy questions are specific but some are foundational and include:

1. On what basis does UC and the RWQB believe the existing scientific reviews conducted by U.S. EPA, California DPR, other researchers and scientific authors are wholly inadequate and in need of rejection/abandonment?
2. The UC report seems to exclude considerable data in their review which appears to serve their desire for further restrictive

regulatory application even though this departs from adopted scientific practices, skews data, increases uncertainty, decreases data robustness and departs from relying on the best scientifically available data.

3. The UC report over-relies on the premise of one exceedence in three years in that EPA only uses that threshold factor for industrial chemicals, not crop protection chemicals.

4. Specific to chlorpyrifos, the UC report totally and inappropriately ignored much of the extensive data base applicable to chlorpyrifos. Ignoring select data totally undermines the scientific credibility of the UC suggestion to further lower the chlorpyrifos threshold.

5. The UC report seems to use a discounted reliability factor of 75% in evaluating data bases. Because chlorpyrifos has an extensive and robust data set this factor would be inappropriate.

6. The UC reviewers seem to categorically ignore data from Mesocosm studies which are among the most relevant data.

7. The present State Board review of sediment toxicity is focused on 1) multiple lines of evidence (MLOE) and 2) considerations of bioavailability, however, neither of these important scientific considerations are embraced in this report.

Before this program proceeds further considerable analysis and modification of the UC report which drives this review must be exhaustively engaged.

Beyond the UC report there are fundamental issues the Board itself must consider regarding this new program. These include:

A. The Regional Board has just concluded its assessment of diazinon and chlorpyrifos and incorporated those new action levels along with the additivity formula into its Basin Plan and in three separate TMDLs. How can the Board justify initiating a separate and inconsistent assessment review within days of settling this issue in the Basin Plans.

B. Why has the Board engaged in a program which focuses only on chemicals used by agriculture to the exclusion of all other possible chemical contaminants.

C. The State Board is presently engaged in a focus on water sediment toxicity and in doing so is adopting a multiple line of evidence (MLOE) approach which this proposed program is apparently rejecting.

D. There seems to be inadequate reliance on and coordination with California DPR and the Washington Office of Pesticide Programs of the U.S. EPA. There are jurisdictional, scientific, and consistency issues which should be addressed.

Thank you for considering these comments. We wish to work closely with the Board and its staff relative to this new global program. Most particularly, we await the Board's response to the above issues and responses to the WPHA and DowAgrosciences' submittals.

Sincerely,

William J. Thomas, Jr.

for BEST BEST & KRIEGER LLP

WJT:lmg

cc: Karl Longley, Chair

Katherine Hart, Vice Chair

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Cheryl Maki, Board Member

Sandra Meraz, Board Member

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Paul Gosselin, Department of Pesticide Regulation

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